

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Samuel N. Zellner

Serial No.: 09/608,184

Filed: June 30, 2000

For: SYSTEM AND METHOD FOR MONITORING COMMERCIAL TRANSACTION

Confirmation No.: 9720

Examiner: Christopher J. Brown

Group Art Unit: 2134

January 29, 2007

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF ON APPEAL UNDER 37 C.F.R. §41.41

Sir:

Appellant's Reply Brief is being filed in response to the Examiner's Answer mailed November 28, 2006. This Reply Brief will address points A and B raised in the Examiner's "Response to Argument", Section (10), of the Examiner's Answer. For at least the reasons explained in Appellant's Brief on Appeal and the present Reply Brief, Appellant requests reversal of the rejections of the claims, allowance of the claims and passing the application to issue.

It is not believed that an extension of time and/or additional fee(s) are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned for under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to Deposit Account No. 50-0220.

The Examiner's Answer Section (10) Response to Argument

Appellant will refrain here from addressing all of the deficiencies with the pending rejections and, therefore, in the interest of brevity, Appellant hereby incorporates herein the arguments set out in Appellant's Brief on Appeal as if set forth in their entirety. Accordingly, Appellant will only address new arguments made in Section (10) Response to Arguments of the Examiner's Answer.

I. Response to Argument Section A.

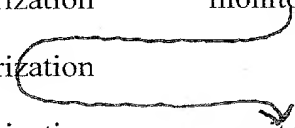
In this section, the Examiner's Answer now argues that it would be obvious to combine U.S. Patent 5,708,442 to Blonder et al. with U.S. Patent 6,047,268 to Bartoli et al. based on "knowledge generally available to one of ordinary skill in the art". This would not be the case, for at least the following reasons:

The Examiner's Answer and Appellant's Brief on Appeal appear to agree that pending independent Claims 56, 60 and 62 all relate to a "commercial transaction processing center", which may be used, for example, to process credit card transactions. The claims recite that the transaction processing center includes two systems: an authorization system and a monitoring system. The authorization system is configured to determine whether or not the commercial transaction is authorized. The monitoring system, on the other hand, is configured to send a notification message to a payer of the commercial transaction, whether or not the transaction is authorized. Claims 56, 60 and 62 elaborate on different aspects of the notification message that is sent by the monitoring system.

The Examiner also appears to agree that Blonder et al. sets forth an elaborate system for both authorization and monitoring (monitoring is referred to in Blonder et al. as "alerts"), and that Bartoli et al. describes various aspects of authorization only, wherein an authorization message is provided to the customer. However, the Examiner's Answer now submits that it would be obvious "from knowledge generally available to one of ordinary skill in the art" to import features from Bartoli et al.'s authorization system into the monitoring system of Blonder et al. to obtain the claimed invention. In effect, the Examiner's rationale may be expressed by the convoluted arrow shown below, wherein selected aspects of Bartoli et al.'s authorization system would be combined with selected aspects of Blonder et al.'s monitoring system, in an attempt to obtain the claimed invention.


Examiner's Combination

Blonder et al.	authorization	monitoring (alert)
Bartoli et al.	authorization	
Pending Claims	authorization	monitoring (alert)



Appellant respectfully submits that there is a much simpler and direct way that one skilled in the art would combine Blonder et al. and Bartoli et al. if there was some motivation to combine them. In particular, features from Blonder et al.'s authorization system and Bartoli et al.'s authorization system would be combined to provide a modified authorization system, whereas the monitoring system of Blonder et al. would remain intact, as shown below. However, this straightforward combination would not provide the claimed invention, as indicated by the "X" in the monitoring arrow.

One Skilled in the Art

Blonder et al.	authorization	monitoring (alert)
Bartoli et al.	authorization	
Pending Claims	authorization	monitoring (alert)

There is only one reason that one skilled in the art would take the convoluted route shown by the "Examiner's Combination" above: if one skilled in the art read Appellant's patent application and then tried to build Appellant's invention from the two cited references based on this reading. Appellant respectfully submits that whether the test for combining references is a "clear and particular suggestion, teaching or motivation to combine" as noted in Appellant's Appeal Brief, or some broader test of "knowledge generally available to one of ordinary skill in the art" now espoused by the Examiner's Answer, the result would be same: if Blonder et al. and Bartoli et al. were combined, their authorization systems would be combined in a straightforward manner shown by "One Skilled in the Art" above, but Blonder et al.'s monitoring system would remain intact. This straightforward combination would not suggest the recitations of the pending claims. For at least these additional reasons, the pending claims are patentable.

Finally, consider the result of the Examiner's convoluted combination of Blonder et al. and Bartoli et al. relative to the pending independent claims, if this convoluted combination was, in fact, made. Even if this convoluted combination was made, the pending independent claims would not be suggested. In particular, the pending independent claims clearly recite that the monitoring system sends a notification message substantially simultaneously with the

sending of an authorization indicator that indicates whether or not the transaction is authorized. Thus, in the pending claims, monitoring takes place after authorization has taken place, and a message is sent regardless of whether the transaction is authorized or not. Now consider Blonder et al, for example the flowchart of Figure 7 of Blonder et al. In this flowchart, the alert Blocks 705 or 708 clearly take place before the transaction is validated (authorized) at Blocks 705, 709 and 710. Thus, the convoluted combination of Blonder et al. and Bartoli et al. would result in monitoring taking place before authorization. Yet, all of the independent claims clearly recite that authorization takes place first and then monitoring takes place. Accordingly, even if the Examiner's convoluted combination was made, one skilled in the art would not arrive at the recitations of the independent claims.

Now, add in the teachings of Bartoli et al. In Bartoli et al., a help message is sent back to the point of sale (the user terminal) as part of transaction authorization if the authorization is denied. As noted in Bartoli et al. Column 7, lines 28-34:

If authorization is denied, a message is displayed on the user's browser indicating that the purchase cannot be authorized and inviting the user to contact a customer assistance representative at a specified phone number. Additional criteria can also be used to determine whether or not to authorize a specific transaction.

Thus, the convoluted combination of Blonder et al. and Bartoli et al. would send a customer contact number as part of an authorization process, which takes place after an alert message or request for approval is already sent. Even under the relaxed standard of "knowledge generally available to one of ordinary skill in the art", the convoluted combination would not describe or suggest conducting an authorization process, determining whether or not the transaction is authorized, and then sending a notification message to the payer of the commercial transaction. For yet these additional reasons, the pending claims are patentable.

II. Response to Argument, Section B

This section reasserts the convoluted combination that the Examiner's Answer has built in an attempt to reconstruct the pending claims. Appellant's Brief on Appeal showed there was no motivation to combine the two cited references. The preceding section of this Reply Brief showed that even if combined in a logical manner, the claim recitations would not be met. This analysis will not be repeated in the interest of brevity.

The final paragraph of section B relates to Claim 62, which recites that "the notification message including therein identifying information related to the commercial transaction, and other information that may be desired by the payer that is independent of the commercial transaction" (emphasis added). The Examiner's Answer continues to argue that Blonder et al.'s teaching of sending a message that the credit card "was used for XX transactions within 24 hours" is a message that is independent of the commercial transaction. Appellant fails to understand how, in the ordinary English meaning, a message that the card was "used for XX transactions within 24 hours" is independent of the current transaction. This number would, by definition, include the current transaction, so it is not independent thereof. Stating it mathematically, if each transaction is labeled T(x), then Blonder et al. teaches the following:

$$\text{Total Transactions} = T(1) + T(2) + \dots + T(n) + T(\text{current transaction}).$$

Again, the total transactions would, by definition, include the current transaction, so it is not independent thereof. Claim 62 is, therefore, patentable for at least these additional reasons.

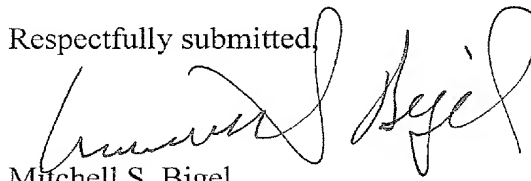
III. Response to Argument, Section C

No reply needed.

Conclusion

For the reasons set forth above and in Appellant's Brief on Appeal, Appellant requests reversal of rejection of the claims, allowance of the claims and passing the application to issue.

Respectfully submitted,

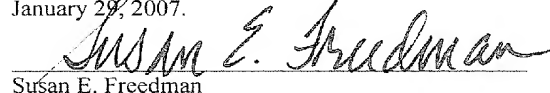


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Susan E. Freedman
Date of Signature: January 29, 2007